

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

THEARDISE K. LOWMAN, SR.,	)	
	)	8:05cv454
Plaintiff,	)	
	)	ORDER ON INITIAL REVIEW
vs.	)	
	)	
MICHELLE A. PETERS, et al.,	)	
	)	
Defendants.	)	

This matter is before the court for initial review<sup>1</sup> of the complaint filed by the plaintiff, Theardise K. Lowman, Sr., who is proceeding pro se and in forma pauperis ("IFP") in this litigation. The plaintiff, a citizen of Arkansas, seeks relief from attorneys located in Nebraska for legal malpractice which allegedly occurred in connection with civil rights litigation in 2002.

Subject matter jurisdiction appears to be based on 28 U.S.C. § 1332 (diversity of citizenship). However, I question whether the complaint was timely and whether the plaintiff has stated a claim on which relief may be granted for professional negligence. Nevertheless, because those issues are more appropriately raised as affirmative defenses, I conclude that the plaintiff's complaint need not be dismissed on initial review.

Therefore, as initial review of the complaint is now concluded, it is time for the plaintiff to obtain service of process on the defendants, as set forth below. Because the plaintiff is proceeding IFP, the U.S. Marshal will serve the defendants, after the plaintiff completes and returns the appropriate forms.

IT IS THEREFORE ORDERED:

1. To obtain service of process on the defendants, the plaintiff must complete and return forms which the Clerk of Court will provide. The Clerk of Court shall provide the plaintiff with summons and 285 forms (four of each) and a copy of this order. The plaintiff shall, as soon as possible, send the completed summons and 285 forms back to the Clerk of Court. In the absence of the completed forms, service of process cannot occur.

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<sup>1</sup>By moving for leave to proceed in forma pauperis, a plaintiff subjects his or her complaint to initial review under 28 U.S.C. § 1915(e)(2).

2. The plaintiff shall review the instructions attached to this order for completing summons and 285 forms when they are received from the Clerk of Court. For service of process on the City of Omaha and upon the Assistant City Attorney in her official capacity, the plaintiff must comply with Neb. Rev. Stat. § 25-510.02(2) when completing the forms for service of process. That statute states: "Any county, city, or village of this state may be served by personal, residence, or certified mail service upon the chief executive officer, or clerk." The City of Omaha may be served at the office of the City Clerk, 1819 Farnam Street, Suite LC-1, Omaha, NE 68183.

3. Upon receipt of the completed summons and 285 forms, the Clerk will sign each summons, to be forwarded, together with a copy of the complaint, to the U.S. Marshal for service on the defendants. The Marshal shall serve each summons and complaint without payment of costs or fees. Service may be by certified mail pursuant to Fed. R. Civ. P. 4 and Nebraska law in the discretion of the Marshal.

4. Fed. R. Civ. P. 4(m) requires service of the complaint on a defendant within 120 days of opening the case. The plaintiff filed the complaint to open this case on September 26, 2005. Therefore, the plaintiff is hereby notified that failure to obtain service of process on a defendant within 120 days of that date may result in dismissal of such defendant without further notice.

5. If service has been obtained on no defendant by the deadline set forth above, the Clerk of Court shall notify the court.

6. After an appearance has been filed by a defendant, the plaintiff shall serve on the defendant or, if an appearance has been entered by counsel, upon such counsel, a copy of every future pleading, letter or other document submitted to the court. Parties usually serve copies of documents on other parties by first class mail.

7. The plaintiff shall include with each document submitted to the court a "Certificate of Service" stating the date a true and correct copy of such document was mailed to each defendant or to the attorney of represented defendant(s). To send communications to the court without serving a copy on the other parties to the case violates the rules of court.

8. A defendant has twenty (20) days after receipt of a summons to answer or otherwise respond to a complaint.

9. The parties are bound by the Federal Rules of Civil Procedure and by the Local Rules of this court. The federal rules are available at any law library, and the local rules are available from the Clerk of Court, and also on the court's web site at [www.ned.uscourts.gov](http://www.ned.uscourts.gov).

10. The plaintiff shall keep the court informed of his current address at all times while this case is pending. Failure to do so may result in dismissal of the case.

DATED this 28<sup>th</sup> day of October 2005.

BY THE COURT:

s/ F. A. GOSSETT  
United States Magistrate Judge

**INSTRUCTIONS: SUMMONS FORMS AND FORMS 285  
for plaintiffs proceeding pro se and in forma pauperis**

1. A summons provides notice to a defendant that the defendant has been sued and must answer or otherwise respond to the complaint.
2. A Form USM-285 ("form 285") provides directions to the U.S. Marshal as to whom to serve with process on your behalf and where to serve the defendant(s). The U.S. Marshal serves the defendant(s) without cost to you because you are proceeding in forma pauperis ("IFP").
3. A plaintiff must use a separate summons form for each defendant.
4. Do not copy your complaint to attach to the summons. The court will do that for you because you are proceeding IFP.
5. You may serve only defendant(s) named in the case caption of the complaint. If you wish to serve additional defendants, you must request leave to amend your complaint to add the others to the case caption.
6. Be sure to print your case number on all forms.
7. You must give an address for each party to be served. The U.S. Marshal will not know a defendant's address.
8. Where a summons form states: "You are hereby summoned **and required to serve on plaintiff's attorney**" print your name and address.
9. Where a form 285 states: "**send notice of service copy to requestor at name and address**" print your name and address.
10. Where a form 285 calls for "**signature of attorney or other originator**" provide your signature and date the form.
11. Leave the last part of the summons form blank. The court will fill in the number of days in which the defendant must answer, and the court will sign and date the form.